

MID-CENTURY INSURANCE COMPANY

**4680 Wilshire Blvd.
Los Angeles, California 90010**

NAIC COMPANY CODE 21687

**MARKET CONDUCT EXAMINATION REPORT
as of December 31, 2003**

**PREPARED BY INDEPENDENT CONTRACTORS FOR THE
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

MID-CENTURY INSURANCE COMPANY
4680 Wilshire Blvd.
Los Angeles, CA 90010

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EXAMINATION REPORT**
as of
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Prepared by

James T. Axman, CIE

Frederick T. Verny, Jr., AIE, FLMI

Independent Contract Examiners

March 11, 2004

The Honorable Doug Dean
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner Dean:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting, rating, and claims practices of Mid-Century Insurance Company's private passenger automobile business, has been conducted. The Company's records were examined at its Colorado Springs Service Center, 3500 N. Nevada Ave. Colorado Springs, CO 80907.

The examination covered a one-year period from January 1, 2003 to December 31, 2003.

A report of the examination of Mid-Century Insurance Company is, herewith, respectfully submitted.

James T. Axman, CIE

Frederick T. Verny, Jr., AIE, FLMI

Independent Market Conduct Examiners

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OF THE
MID-CENTURY INSURANCE COMPANY**

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COMPANY PROFILE

Mid-Century Insurance Company, hereinafter referred to as “the Company,” was incorporated on December 3, 1949 under the laws of California and began operations on February 17, 1953. During 1993, Farmers Insurance Exchange, which previously owned 100% of the outstanding capital stock, sold 10% ownership shares of Mid-Century affiliates Truck Insurance Exchange and Fire Insurance Exchange. Subsequent to the transfer of ownership interest, Farmers Insurance Exchange, Fire Insurance Exchange, and Truck Insurance Exchange made capital contributions of \$800 million, \$100 million, and \$100 million respectively into Mid-Century, as part of its re-capitalization to support prospectively the commercial lines underwritten by the group.

Currently, the company is licensed in the following states: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

The Company was licensed in the state of Colorado on September 18, 1953. The Company is licensed to write property, casualty, workers compensation, disability, marine, surety, vehicle, burglary and theft, medical malpractice, accident and health, livestock, personal property floaters, mortgage, credit, fire and lightning, allied lines, crops, earthquake, aircraft, ocean marine, inland marine, homeowners multiple peril, commercial multiple peril, and farm owners multiple peril.

The Company maintains its home office in Los Angeles, California. The Colorado service center is located in Colorado Springs, Colorado.

*As of the calendar year 2002 the Company had reported premium in Colorado of \$105,257,000 for Private Passenger Automobile Insurance, representing a 3.64 % market share in Colorado.

*Data as reported in the Colorado Insurance Industry Statistical report.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law §10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to Private Passenger Automobile insurance laws. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2003 to December 31, 2003.

File sampling was based on a review of underwriting and claims files that were systematically selected by using Audit Command Language (ACL) software and computer data files provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

The report addresses only Private Passenger Automobile issues and contains information regarding exceptions to the Colorado insurance law. The examination included review of the following:

1. Company Operations and Management
2. Complaint Handling
3. Underwriting
4. Rating
5. Claims Practices

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's Private Passenger Automobile underwriting, rating, and claims practices to determine compliance with the Colorado insurance law as outlined in Exhibit 1.

Exhibit 1

Law	Subject
Section 10-1-128	Fraudulent Insurance Acts.
Section 10-4-413	Records required to be maintained
Section 10-4-602.	Basis for Cancellation.
Section 10-4-603.	Notice.
Section 10-4-604.	Nonrenewal.
Section 10-4-605.	Proof of notice.
Section 10-4-609.	Insurance protection against uninsured motorists-applicability.
Section 10-4-610.	Property damage protection against uninsured motorists.
Section 10-4-611.	Elimination of discounts – damage by uninsured motorist.
Section 10-4-613.	Glass repair and replacement.
Section 10-4-614.	Inflatable restraint systems - replacement - verification of claims.
Section 10-4-626	Prohibited reasons for nonrenewal or refusal to write auto
Section 10-4-627	Discriminatory standards-proof of financial responsibility
Section 10-4-628	Refusal to write – changes in – cancellation-nonrenewal prohibited
Section 10-4-629	Cancellation-renewal-reclassification
Section 10-4-630	Exclusion of named driver
Section 10-4-632	Reduction in rates for drivers aged 55 or older with drivers education
Section 10-4-633	Certification of policy and notice forms
Section 10-4-706.	Required coverages - complying policies - PIP examination program.
Section 10-4-706.5.	Operator's policy of insurance.
Section 10-4-707.5.	Ridesharing arrangements - benefits payable - required coverage.
Section 10-4-708.	Prompt payment of direct benefits.
Section 10-4-709.	Coordination of benefits.
Section 10-4-710.	Required coverages are minimum.
Section 10-4-711.	Required provision for intrastate and interstate operation.
Section 10-4-713.	No tort recovery for direct benefits.
Section 10-4-714.	Limitation on tort actions.
Section 10-4-715.	No limitation on tort action against non-complying tort-feasors.
Section 10-4-717.	Intercompany arbitration.
Section 10-4-718.	Quarterly premium payments.
Section 10-4-719.	Prohibited reasons for nonrenewal or refusal to write a policy of autom insurance applicable to this part 7.
Section 10-4-719.5.	Discriminatory standards - premiums - surcharges - proof of financial responsibility requirements.
Section 10-4-719.7.	Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited.

Section 10-4-720.	Cancellation - renewal - reclassification.
Section 10-4-721.	Exclusion of named driver.
Section 10-4-724.	Reduction in rates for drivers aged fifty-five years or older who complete a driver's education course - legislative declaration.
Section 10-4-725.	Certification of policy and notice forms.
Section 10-3-1103.	Unfair methods of competition and unfair or deceptive acts or practices prohibited.
Section 10-3-1104.	Unfair methods of competition and unfair or deceptive acts or practices.
Regulation 1-1-7.	Market Conduct Record Retention.
Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests
Regulation 5-1-2.	Application and Binder Forms.
Regulation 5-1-10.	Rate and Rule Filing Regulation
Regulation 5-1-16.	Limitations on the Use of Credit Information or Insurance Scores
Regulation 5-2-1.	Relative Value Schedule for No Fault.
Regulation 5-2-2.	Renewal of Automobile Insurance Policies – Excluded Named Drivers.
Regulation 5-2-3.	Amended Auto Accident Reparations Act (No Fault) Rules and Regulations
Regulation 5-2-6.	Automobile No Fault Cost Containment Options.
Regulation 5-2-8.	Timely Payment of Personal Protection Benefits.
Regulation 5-2-9.	Personal Injury Protection Examination Program.
Regulation 5-2-11	Transition from No-Fault Auto to Tort System.
Regulation 5-2-12	Automobile Insurance Consumer Protections.
Regulation 6-1-1.	Limiting coverage.
Regulation 6-2-1.	Complaint Record Maintenance.

Company Operations/Management

The examiners reviewed Company management, implementation, and quality controls, record retention, installment payment plans, anti-fraud plan, forms certification, and timely cooperation with the examination process.

Complaints

The examiners reviewed the complaint database log maintained by the Division of Insurance as a general guideline to determine complaint activity for the period under examination.

Contract Forms and Endorsements

The following Private Passenger Automobile forms and endorsements were filed for certification with the Colorado Division of Insurance on July 9, 2003: These forms were also reviewed to determine compliance with the Colorado law.

Title	Form
Personal Auto Policy Dec Page	56-5002 (05/96)
Evidence of Insurance – State of Colorado	25-2021 (03/03)
Evidence of Insurance – State of Colorado	25-2021 (05/03)
Explanation of Work Loss Benefits Coverage and Options	31-2015 (11-98)
Explanation of PIP Benefits and Options	31-0996 (09/00)
Income Sensitive Coverage – RO	31-0997 (06/00)
No Fault (PIP) Disclosure and Election of PPO Option	51-0590 (01/03)
Notification letter for inability to write (outside of operations)	25-0928 (03/98)
Fair Credit Reporting Act Notification	25-2123 (06/03)
UM Disclosure of Limits Options	25-2415 (06/92)
Schedule for Higher Underinsured Motorist Limits	25-7095 (08/96)
Fair Credit Reporting Act Notice of Adverse Action	25-7535 (08/02)
Fair Credit Reporting Act Notice	25-7535 (02/03)
Farmers Privacy Notice	25-7660 (09/02)
Coverage Disclosure statement	25-1247 (06/93)
Notification of eligibility for Automobile Insurance Plan	25-0515 (04/94)
Work Loss Benefits Coverage Optional Waiver	31-2016 (11/98)
Notification card of inability to write PPO due to location.	25-2410 (10/91)
Senior Defensive Driver Discount – Colorado	25-2366 (09/91)
Auto Insurance Program Summary	31-0629 (08/96)
Auto Insurance Program Summary	31-0629 (05/03)
Certificate of Insurance	25-2866 (02/98)
Cancellation Notice for Non-Payment	25-7015 (01/97)
Payment Voucher	25-7020 (04/96)
Revised Payment Voucher	25-7070 (01/97)
Notice of Cancellation of Mortgagee or Other Interest	25-0007 (03/01)
Insured Authorization to Convert from No-Fault to Tort	25-6214 (06/03)
Important Message to Insured regarding conversion to Tort	25-6219 (06/03)
Notice of Cancellation/Non-Renewal/Surcharge/Reduction	25-0834 (03/03)
Notice of Cancellation/Non-Renewal/Surcharge/Reduction	25-0834 (04/99)
Notice of Cancellation/Non-Renewal/Surcharge/Reduction	25-0834 (12/95)
Important Expiration Notice	25-7102 (05/01)
Renewal Premium Notice	25-7104 (08/01)
Evidence of Insurance – State of Colorado	25-7384 (09/01)
Evidence of Insurance – State of Colorado	25-7383 (09/01)

In-force Business /Cancellations/Non-renewals/Surcharges/PIP Conversion

For the period under examination, systematically selected samples were taken as follows:

Review Lists	Population	Sample Size	Percentage to Population
In-Force Business	16,384	100	1%
Cancellations	34,012	100	1%
Non-Renewals	146	50	34%
Surcharges	8,381	100	1%
PIP Conversion	3,026	50	2%

Rating

The examiners reviewed the rate, rule filings, statistical justifications, and methodology submitted to Colorado Division of Insurance for the period under examination. This information was compared against a sample of in-force policies, rated by each coverage, to determine compliance with filed base rates, territory codes, symbols, class plans, discounts, tier-rating factors, and final premium calculations.

Claims

For the period under examination, the examiners systematically selected the following samples to determine compliance with claims handling practices and manual rules:

Review Lists	Population	Sample Size	Percentage to Population
Claims Paid	10,079	100	2%
Claims Paid - PIP	1,559	50	4%
Claims Not Paid - CWP	197	50	12%

EXAMINATION REPORT SUMMARY

The examination resulted in five (5) issues arising from the Company's apparent failure to comply with Colorado insurance laws that govern all property and casualty insurers operating in Colorado. These issues involved the following categories:

Company Operations and Management:

In the area of company operations and management two (2) compliance issues are addressed in this report. The issues in this phase are identified as follows:

- **Failure to include some forms on the annual certification listing currently in use by the Company and therefore non-certified for the period under examination.**
- **Failure, in some cases, to maintain records required for market conduct purposes.**

It is recommended that the Company review its company operations practices and procedures and make necessary changes to ensure future compliance with applicable statutes and regulations as to each issue addressed.

Complaint Handling:

In the area of complaint handling, no compliance issues are addressed in this report.

Underwriting:

In the area of underwriting, two (2) issues are addressed in this report. These issues arise from Colorado insurance law requirements that must be complied with whenever policies are issued, canceled, rejected, non-renewed, or surcharged. The issues in this phase are identified as follows:

- **Failure, in some cases, to offer a named driver exclusion.**
- **Failure, in some cases, to apply a three (3) year experience period, in surcharging policies, which requires at least one incident occur within a fifteen (15) month period immediately preceding the next renewal date.**

It is recommended that the Company review its underwriting practices and procedures and make necessary changes and/or provide additional staff training to ensure future compliance with applicable statutes and regulations as to each issue addressed.

Rating:

In the area of rating, no compliance issues are addressed in this report.

Claim Practices:

In the area of claim practices, one (1) compliance issue is addressed in this report. The issue arises from Colorado insurance law requirements dealing with the fair and equitable settlement of claims, claims handling practices, payment of PIP claim benefits, and the timeliness and accuracy of claim payments. The issue in this phase is identified as follows:

- **Delay, in some cases, in the payment of PIP benefits.**

It is recommended that the Company review its claim handling practices and procedures and make necessary changes to ensure future compliance with applicable statutes and regulations as to each issue addressed.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

MID-CENTURY INSURANCE COMPANY

PERTINENT FACTUAL FINDINGS

PERTINENT FACTUAL FINDINGS

COMPANY OPERATIONS

Issue A: Failure to include some forms on the annual certification listing currently in use by the Company and therefore non-certified for the period under examination.

Section 10-4-725(1), C.R.S., Certification of forms, states in part :

(1) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner issued or delivered to any policyholder in Colorado. Such listing shall be submitted by July 15, 1993, and not later than July 1 of each subsequent year and shall contain a certification by an officer of the organization that to the best of the officer's knowledge each policy form, endorsement, or notice form in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

(2) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall also submit to the commissioner a list of any NEW policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner at least thirty-one (31) days before using such policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner. Such listing shall also contain a certification by an officer of the organization that to the best of the officer's knowledge each new policy form, endorsement, or notice form proposed to be used complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

Section 10-4-633. Certification of policy and notice forms. (Effective July 1, 2003)

(1) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner issued or delivered to any policyholder in Colorado. Such listing shall be submitted no later than July 1 of each year and shall contain a certification by an officer of the organization that to the best of the officer's knowledge each policy form, endorsement, or notice form in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

(2) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall also submit to the commissioner a list of any new policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner at least thirty-one days before using such policy form, endorsement,

cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner. Such listing shall also contain a certification by an officer of the organization that to the best of the officer's knowledge each new policy form, endorsement, or notice form proposed to be used complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

(3) The commissioner shall have the power to examine and investigate insurers authorized to conduct business in Colorado to determine whether automobile policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner comply with the certification of the organization and statutory mandates.

Additionally, Colorado Regulation 1-1-6. Concerning the Elements of Certification for Accident and Health forms, Automobile Private Passenger Forms, and Claims-made Liability Forms, as promulgated under the authority of Section 10-1-109, C.R.S., states in part:

III. Rules

A. Definitions

1. "Annual Report for automobile private passenger insurance" shall mean a list of all automobile private passenger policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of reductions in coverage and any other such forms as requested by the commissioner currently in use and issued or delivered to any policyholder in Colorado, including the titles of the programs or products affected by the forms.

In the review of the forms certification listing filed with the Division of Insurance for the period under examination, and in comparison to those forms being used by the Company in its underwriting operations, it was noted that two (2) forms were not included on the listing, and one (1) form did not list other edition dates that were also in use. Colorado insurance law requires that the Company submit a complete annual certification report to the commissioner listing any form, disclosure, endorsement or rider delivered to any policyholder in Colorado. Since these forms were omitted, the annual certification would therefore be considered incomplete with further implications that the Company was using these non-certified forms during the period under examination.

The Forms relating to this issue are as follows:

51-0834 (ed. 12-95 and 03-03) - Notice of cancellation, nonrenewal, and increase and reduction in premium.

PS-6 (25-0046) - Notice of cancellation (Electronic form) - insured request

UND 32 (51-0032) - Notice of Cancellation - New business

Recommendation # 1:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-725, and 10-4-633, C.R.S., and Colorado Regulation 1-1-6. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has filed a complete annual certification which includes all forms currently being used and has implemented necessary changes in order to ensure future compliance with Colorado insurance law.

Issue B: Failure, in some cases, to maintain records required for market conduct purposes.

Section 10-4-413 (1), C.R.S., "Records required to be maintained", states in part:

every insurer: ...shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group or association complies with the provisions of this part 4 applicable to it...

Additionally, Colorado Regulation 1-1-7, promulgated under the authority of Section 10-1-109, C.R.S. states in part:

Section 4. **RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES**

A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years.

B. Each producer of record, if the carrier does not maintain, shall maintain records for each policy sold, and the records shall contain all work papers and written communications in the producer's possession pertaining to the documented policy.

Section 5. **POLICY RECORDS**

A. The following records shall be maintained: A policy record shall be maintained for each policy issued. Policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition of additional exclusions from or exceptions to coverage. If a policy is terminated, either by the insurer or the policyholder, documentation supporting the termination and account records indicating a return of premiums, if any, shall also be maintained. Policy records need not be segregated from the policy records of other states so long as the records are readily available to market conduct examiners as required under this regulation.

B. Policy records shall include at least the following:

(1) The actual, completed application for each contract, where applicable;

(a) The application shall bear the signature, either written or digitally authenticated, where required, of the applicant whenever the insurer intends to retain any right to contest any warranty, representation or condition contained in the application; or

(b) The application shall bear a clearly legible means by which an examiner can identify a producer involved in the transaction. The examiners shall be provided with any information needed to determine the identity of the producer;

(2) Any declaration pages (the initial page and any subsequent pages), the insurance contract, any certificates evidencing coverage under a group contract, any endorsements or riders associated with a policy, any termination notices, and any written or electronic correspondence to or from the insured pertaining to the coverage. A separate copy of the record need not be maintained in the individual policy to which the record pertains, provided it is clear from the insurer's other records or systems that the record applies to a particular policy and that any data contained in the record relating to that policy, as well as the actual policy, can be retrieved or recreated;

(3) Any binder with terms and conditions that differ from the terms and conditions of the policy subsequently issued; and

(4) Any guidelines, manuals or other information necessary for the reconstruction of the rating, underwriting, and claims handling of the policy. Presentation at the site of a market conduct examination of a single copy of each of the above shall satisfy this requirement. If a rating, underwriting, or claims handling record is computer based, the records used to input the information into the computer system shall also be available to the examiners. These types of records include, but are not limited to, the application, where applicable, the policy form including any amendments or endorsements, rating manuals, underwriting rules, credit reports or scores, claims history reports, previous insurance coverage reports, e.g., MIB questionnaires, internal reports, loans and underwriting and rating notes.

Section 6. CLAIM RECORDS

The claim records shall be maintained so as to show clearly the inception, handling and disposition of each claim. The claim records shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed.

A. The record shall include at least the notification of claim, proof of loss, (or other form of claim submission) claim forms, proof of claim payment check or draft, notes, contract, declaration pages, information on type of coverage, endorsements or riders, work papers, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, payment or denial of the claim, and any claim manuals or other information necessary for reviewing the claim. Where a particular document pertains to more than one record, insurers may satisfy the requirements of this paragraph by making available, at the site of a market conduct examination, a single copy of each document.

B. Documents in a claim record received from an insured, the insured's agent, a claimant, the department or any other insurer shall bear the initial date of receipt date-stamped by the insurer in a legible form in ink, an electronic format, or some other permanent manner. Unless the company provides the examiners with written procedures to the contrary, the earliest date stamped on a document will be considered the initial date of receipt.

C. If an insurer, as its regular business practice, places the responsibility for handling certain types of claims upon company personnel other than its claims personnel, the insurer need not duplicate its records for maintenance by claims personnel. These claims records shall be maintained as part of the records of the insurer's operations and shall be readily available to examiners.

The Company could not provide the examiners with four (4) PIP medical billings, three (3) non-renewal notices, and eight (8) surcharge notices for market conduct review. Underwriting and claims files are to be maintained as required by Colorado insurance law:

Recommendation # 2

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-413, C.R.S. and Colorado Regulation 1-1-7. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has established a maintenance and retrieval procedure for market conduct review and implemented necessary changes in order to ensure compliance with Colorado insurance law.

PERTINENT FACTUAL FINDINGS

UNDERWRITING

Issue C: Failure, in some cases, to offer a named driver exclusion.

Section 10-4-719.7, C.R.S. Refusal to write, changes in, cancellation, or non-renewal of policies prohibited, states, in part:

(b) (I) No insurer shall refuse to write a complying policy solely because of the claim or driving record of one or more but fewer than all of the persons residing in the household of the named insured.

(II) An insurer shall offer to exclude any person by name pursuant to section 10-4-721 in the household if such person's driving record and claim experience would justify the refusal by such insurer to write a policy for such person if such person were applying in such person's own name and not as part of a household.

Section 10-4-721, C.R.S., Exclusion of named driver, states, in part:

(1) In any case where an insurer is authorized under this part 7 to cancel or refuse to renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation, non-renewal, or premium increase offer to continue or renew the insurance but to exclude from coverage, by name, the person whose claim experience or driving record would have justified the cancellation or non-renewal. The premiums charged on any such policy excluding a named driver shall not reflect the claims, experience, or driving record of the excluded named driver.

Section 10-4-628, Refusal to write - changes in - cancellation - nonrenewal of policies prohibited.

(b) (I) An insurer shall not refuse to write a complying policy solely because of the claim or driving record of one or more but fewer than all of the persons residing in the household of the named insured.

(II) An insurer shall offer to exclude any person in a household by name pursuant to section 10-4-629 if such person's driving record and claim experience would justify the refusal by such insurer to write a policy for such person if such person were applying in such person's own name and not as part of a household.

(III) An insurer renewing a policy pursuant to subparagraph (II) of this paragraph (b) shall include, as part of such renewal, a written notice naming the party specifically excluded from coverage.

Section 10-4-630, Exclusion of named driver.

(1) In any case where an insurer is authorized under this part 6 to cancel or refuse to renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation, nonrenewal, or premium increase

offer to continue or renew the insurance but to exclude from coverage, by name, the person whose claim experience or driving record would have justified the cancellation or nonrenewal. The premiums charged on any such policy excluding a named driver shall not reflect the claims, experience, or driving record of the excluded named driver.

(2) With respect to any person excluded from coverage under this section, the policy may provide that the insurer shall not be liable for damages, losses, or claims arising out of this operation or use of the insured motor vehicle, whether or not such operation or use was with the express or implied permission of a person insured under the policy.

The following charts illustrate the significance of error versus the population and sample examined:

Private Passenger Automobile non-renewals

Population	Sample Size	Number of Exceptions	Percentage to Sample
146	50	3	6%

An examination of fifty (50) out of a population of 146 policies non-renewed by the Company during the examination period, showed three (3) exceptions (or 6% of the sample) wherein the Company failed to offer a named driver exclusion as required by Colorado insurance law.

Private Passenger Automobile cancellations

Population	Sample Size	Number of Exceptions	Percentage to Sample
34,012	100	2	2%

An examination of 100 out of a population of 34,012 policies cancelled by the Company during the examination period, showed two (2) exceptions (or 2% of the sample) wherein the Company failed to offer a named driver exclusion as required by Colorado insurance law.

Recommendation #3:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-719.7, 10-4-721, 10-4-628, and 10-4-630, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its procedures and implemented necessary changes in order to ensure that an offer to exclude a named driver is provided in compliance with Colorado insurance law.

Issue D: Failure, in some cases, to apply a three (3) year experience period in surcharging policies, which requires at least one incident to have occurred within a fifteen (15) month period immediately preceding the next renewal date.

Colorado Regulation 5-2-3 [As amended effective 05/01/2002]. Auto Accident Reparations Act (No-Fault) Rules And Regulations, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue under the authority of Sections 42-1-204, 104-704, 10-4-718, 10-4-719.7, and 10-1-109, C.R.S. states, in part:

3. Application of time limitations.

In reviewing protests under §10-4-720, C.R.S., the Division of Insurance will apply the following time limitations:

- a. If the insurer bases its action upon the fact that an insured has been involved in an accident which resulted in payment under the policy and/or has been convicted of a motor vehicle violation, the insurer may base its action on convictions or accidents which occurred during the thirty-six (36) month period immediately preceding the date of the proposed action for that individual insured under the policy. However, in case of non-renewals, increase in premiums, or reduction in coverage, in order to take action upon incidents occurring during this thirty-six (36) month period, at least one (1) incident must have occurred during the fifteen (15) month period immediately preceding the next renewal date for each individual upon whom the proposed action is being attempted. Cancellations are subject to the restrictions set forth in §10-4-602, C.R.S.
- b. An insurer may exceed the fifteen (15) month period if such renewal is the first opportunity to underwrite an additional insured, i.e., new driver in household. Surcharge or merit rating changes may only be made on the policy renewal date.

The following chart illustrates the significance of error versus the population and sample examined:

Private Passenger Automobile Surcharges

Population	Sample Size	Number of Exceptions	Percentage to Sample
8381	100	5	5%

An examination of 100 out of a population of 8,381 policies surcharged by the Company during the examination period, showed five (5) exceptions (or 5% of the sample) wherein the Company failed to correctly apply a three-experience period in surcharges as required by Colorado insurance law.

Recommendation #4:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of amended Colorado Regulation 5-2-3. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has taken appropriate steps to ensure that when surcharging policies, at least one incident occurred within a fifteen (15) month period immediately preceding the next renewal date, in order to ensure compliance with Colorado insurance law.

PERTINENT FACTUAL FINDINGS

CLAIMS PRACTICES

Issue E: Delay, in some cases, in the payment of PIP benefits.

Section 10-4-708 C.R.S., Prompt payment of direct benefits, provides, in part:

(1) Payment of benefits under the coverages enumerated in section 10-4-706(1)(b) to (1)(e) or alternatively, as applicable, section 10-4-706(2) or (3) shall be made on a monthly basis. Benefits for any period are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of expenses incurred during that period; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation.

Additionally, Amended Regulation 5-2-8 [Amended and effective September 1, 2000], Timely Payment of Personal Injury Protection Benefits, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue pursuant to §§10-1-109, 10-4-704, 10-4-708(1.3), and 10-3-1110(1), C.R.S.

Section 3, Rule

B. Prompt Payment of PIP Benefits

Section 10-4-708(1), C.R.S. provides that benefits under the coverages enumerated in §10-4-706, C.R.S. are overdue if not paid within 30 days after the insurer receives reasonable proof of the fact and amount of the expenses incurred.

The following chart illustrates the significance of error versus the population and sample examined:

Private Passenger Auto PIP Claims Paid

Population	Sample Size	Number of Exceptions	Percentage to Sample
1,559	50	16	32%

An examination of fifty (50) PIP paid claim files, paid by the Company during the examination period, showed sixteen (16) exceptions (32% of the sample) wherein the Company failed to pay at least one PIP medical bill in each file within the thirty (30) day statutory standard as required by Colorado insurance law.

Recommendation # 5:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-708, C.R.S., and Colorado Amended Regulation 5-2-8. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its claims handling of PIP benefit payments and implemented necessary procedural changes in order to ensure compliance with Colorado insurance law.

Summary of Recommendations

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